

229052

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 32609**

---

**CHESAPEAKE RAILROAD COMPANY – MODIFIED RAIL CERTIFICATE**

---

**MOTION OF THE  
MARYLAND TRANSIT ADMINISTRATION  
FOR FURTHER EXTENSION OF PERIOD FOR NEGOTIATION OF  
TRAIL USE AGREEMENT**

---

ENTERED  
Office of Proceedings  
MAR 29 2011  
Part of  
Public Record

Communications with respect to this pleading  
should be addressed to:

Charles A. Spitulnik  
W. Eric Pilsk  
Allison I. Fultz  
KAPLAN KIRSCH & ROCKWELL LLP  
1001 Connecticut Avenue, N.W.  
Suite 800  
Washington, DC 20036  
(202) 955-5600

Counsel for the Maryland Transit Administration

Dated: March 29, 2011

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 32609**

---

**CHESAPEAKE RAILROAD COMPANY – MODIFIED RAIL CERTIFICATE**

---

**MOTION OF THE  
MARYLAND TRANSIT ADMINISTRATION  
FOR FURTHER EXTENSION OF PERIOD FOR NEGOTIATION OF  
TRAIL USE AGREEMENT**

---

The Maryland Transit Administration (“MTA”), pursuant to 49 C.F.R. § 1104.7(b), hereby submits this Motion for a further extension of the 180-day time period afforded under 49 C.F.R. § 1152.29(c)(1) for negotiation of a trail use agreement in this proceeding. MTA seeks a 180-day extension of the trail use negotiation period from February 24, 2011, the date of the Board’s most recent Decision in this proceeding, to August 23, 2011, in order to negotiate a trail use agreement with the Maryland Department of Transportation (“MDOT”) and/or other entities in light of the Board’s February 24, 2011, Decision.

**BACKGROUND**

The Board issued a Certificate of Interim Trail Use (“CITU”) in this proceeding to permit MTA to establish interim trail use on the Clayton-Easton Line, which extends from MP 00.0 in Clayton, DE, to MP 45.3 in Easton, MD, and on a segment in Maryland, the Denton Spur, from MP 00.0 in Queen Anne, MD, to MP 8.8 in Denton, MD. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Jan. 9, 2006).<sup>1</sup>

---

<sup>1</sup> On July 5, 2007, the Board issued a Decision granting MTA’s request to remove an approximately 5.514 acre segment of spur track known as the “Easton Spur” from the CITU, and to partially vacate the CITU as to the Easton

According to the Board's order issued in this proceeding on March 25, 2008, the period for negotiating an agreement was last extended to September 27, 2008. Prior to the expiration of the negotiating period, MTA submitted a Notice of Consummation of Trail Use Agreements confirming that MTA had entered into trail use agreements with (a) Delaware Department of

---

Natural Resources and Environmental Control ("DNREC") for interim trail use on the Delaware portion of the line and (b) Maryland Department of Natural Resources ("MDNR") for the remainder of the line. MTA – Notice of Consummation of Trail Use Agreements, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed Sept. 26, 2008) ("Notice of Consummation").

MTA attached copies of the statement of willingness to assume financial responsibility ("SWAFR") provided by DNREC and the Lease Agreement between MTA and MDNR, which included MDNR's SWAFR, to its Notice of Consummation. On May 22, 2009, MTA submitted a request to amend the Notice of Consummation in order to substitute a License Agreement between MTA and DNREC, which included DNREC's SWAFR, for the SWAFR MTA had submitted as an attachment to the original Notice of Consummation. MTA – Request to Amend Notice of Consummation of Trail Use Agreements, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed May 22, 2009). The Board's Acting Secretary then issued a Decision rejecting the SWAFRs of MDNR and DNREC as not fully complying with the requirements of 49 C.F.R. § 1152.29(a)(3). *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Aug. 21,

---

Spur. *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date July 5, 2007).

2009). MTA appealed this Decision to the full Board, and the Board issued its Decision on February 24, 2011, denying MTA's appeal.

### **DISCUSSION**

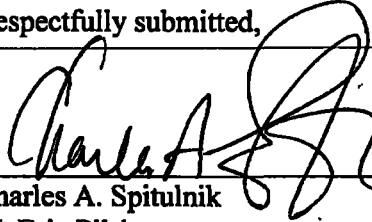
Now that the Board has issued its February 24, 2011, Decision, MTA must resume

---

negotiations with MDOT, MDNR and/or DNREC in order to conclude a trail use agreement pursuant to the CITU in this matter. MDOT provided a SWAFR as the trail sponsor pursuant to 49 C.F.R. § 1152.29(a)(3), which MTA entered into the record in this matter on June 28, 2006. MTA – Supplemental Motion for Extension of Period for Negotiation of Trail Use Agreement, Exhibit 1, *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Filed Jun. 28, 2006). The Board has acknowledged that MDOT had “executed the necessary statement of willingness to assume financial responsibility.” *Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Rail Certificate*, Finance Docket No. 32609 (Service Date Jul. 10, 2006). Furthermore, all parties, including MTA, MDOT, MDNR and DNREC need additional time to evaluate their options for a trail use agreement in light of the Board's February 24, 2011, decision.

WHEREFORE, and in view of the foregoing, MTA respectfully requests the Board to extend the time for completion of Trail Use Agreement in this proceeding for an additional 180 days to August 23, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik

W. Eric Pilsk

Allison I. Fultz

KAPLAN KIRSCH & ROCKWELL LLP

1001 Connecticut Avenue, N.W.

Suite 905

Washington, DC 20036

(202) 955-5600

Counsel for the Maryland Transit Administration

Dated: March 29, 2011

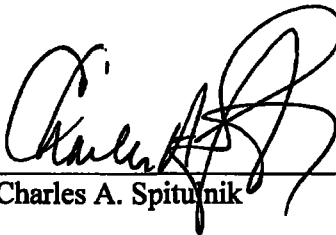
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served a copy of the foregoing MOTION  
OF THE MARYLAND TRANSIT ADMINISTRATION FOR FURTHER EXTENSION OF  
~~PERIOD FOR NEGOTIATION OF TRAIL USE AGREEMENT~~, upon the following parties of  
record in this proceeding by first class mail with postage prepaid and properly addressed:

General Counsel  
American Short Line and Regional Railroad Association  
50 F Street, N.W., Suite 7020  
Washington, DC 20001

Edward G. Banks, Jr.  
Maryland Delaware Railroad  
106 Railroad Avenue  
Federsburg, MD 21632-1499

Linda A. Janey  
Maryland Office of Planning  
301 West Preston Street  
Baltimore, MD 21201-2365

  
\_\_\_\_\_  
Charles A. Spitulnik

Dated: March 29, 2011